

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SERGIO M. ALEMAN,

No. 2:19-cv-00922-YY

Plaintiff,

ORDER

v.

B. AMSBERRY, et al.,

Defendants.

HERNÁNDEZ, District Judge:

Magistrate Judge You issued a Findings and Recommendation [23] on February 11, 2020, in which she recommends the Court grant Defendants' Motion to Dismiss [19]. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

The Court has carefully considered Plaintiff's objections and concludes that the objections do not provide a basis to modify the recommendation. The Court has also reviewed the pertinent portions of the record *de novo* and finds no error in the Magistrate Judge's Findings and Recommendation. However, Plaintiff may amend the Complaint to allege facts that support tolling the statute of limitations or estopping its use as a defense. For example, the statute of limitations may be tolled based on exhaustion. *See Lillie v. Howton*, No. 1:11-cv-00595-CL, 2011 WL 2469734 (D. Or. June 20, 2011) (“Because an inmate may not bring an action in this court before exhausting available administrative remedies with the prison, ‘the applicable statute of limitations must be tolled while a prisoner completes the mandatory exhaustion process.’”). Similarly, a defendant may be equitably estopped from asserting a statute of limitations defense “if he lulled the plaintiff, by affirmative inducement, into delaying the filing of a cause of action.” *Philpott v. A.H. Robins Co., Inc.*, 710 F.2d 1422, 1425 (9th Cir. 1983); *Gehrke v. CrafCo, Inc.*, 143 Or. App. 517, 525 (1996) (elements of equitable estoppel).

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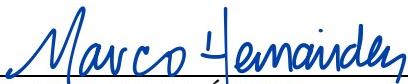
CONCLUSION

The Court adopts Magistrate Judge You's Findings and Recommendation [23].

Accordingly, the Court GRANTS Defendants' Motion to Dismiss [19] and dismisses the Complaint without prejudice. Plaintiff may file an amended complaint, consistent with this Order, within 30 days of the date below.

IT IS SO ORDERED.

DATED: May 8, 2020.



MARCO A. HERNÁNDEZ
United States District Judge